IN THE

Supreme Court of the United States

October Term, 1977

No. 1546

WILLIAM H. STAFFORD, JR., STUART J. CARROUTH and CLAUDE MEADOW,
Petitioners,

—v.—

JOHN BRIGGS, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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OPPOSITION TO PETITION FOR CERTIORARI

COUNTER STATEMENT OF FACTS

This is an action for declaratory relief and for damages for violation of respondents' constitutional and civil rights in connection with the grand jury proceedings, T/Misc. 1/122 and 1/126 (N.D. Fla.), indictment captioned United States v. Camil, GCR 1344 (N.D. Fla.) and superceding indictment and trial in United States v. Briggs, GCR 1353 (N.D. Fla.)[1/]

1/ Respondents are the plaintiffs in the case sub judice. Eight of them were defendants in the criminal case, United States v. Briggs, supra, and were found not guilty after a jury trial. The other two respondents were held in contempt for refusing to answer questions before the grand jury and their convictions were reversed on appeal. Beverly v. United States, 468 F.2d 732 (5th Cir., 1972). See also United States v. Briggs, 514 F.2d 794 (5th Cir., 1975). Petitioners are three of the four defendants in the civil action Briggs, et al. v. Goodwin, et al. Their co-defendant, Guy Goodwin, is not a party to this proceeding. In this brief to avoid confusion, the parties to this proceeding will be referred to whenever possible only as petitioners or respondents. Goodwin, the petitioner in the companion case Goodwin v. Briggs, No. 77-1401 will be referred to as defendant Goodwin.

The three petitioners together with defendant Goodwin are being sued for actions by them under color of law and in their official roles as federal government employees but beyond the scope of their authority.[2/] The gravamen of this action is that petitioners conspired together with defendant Goodwin, an attorney for the Department of Justice, to inter alia conceal the presence of one or more informer among grand jury witnesses in the defense camp in United States v. Briggs, supra, and that petitioners' actions violated respondents' rights under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments.

More specifically respondents have alleged that in July, 1972, petitioners Stafford (a United States Attorney), Carrouth

2/ The complaint and amendment to complaint are printed in the appendix to the brief in opposition to petition for certiorari in the companion case Goodwin v. Briggs, supra (No. 77-1401, App. 1a-43a).

(an Assistant United States Attorney), and Meadow (the FBI agent in charge of the matter) together with defendant Goodwin (an attorney for the Department of Justice, Division of Internal Security) were investigating the Vietnam Veterans Against the War/Winter Soldier Organization (hereinafter VVAW) before a federal grand jury in Tallahassee, Florida and had subpoenaed respondents along with other VVAW members from such widely scattered and far away places as Arkansas, Texas, Louisiana and Washington, D.C., requiring them on less than three days notice to appear before the Florida grand jury.

Respondents further allege that petitioners conspired together with defendant Goodwin and concealed defendant Goodwin's perjury in order to continue to have one or more paid FBI undercover agent in the defense camp, continuing such concealment

throughout the trial in United States v. Briggs, supra, ¶33, Complaint, Appendix No. 77-1401, p. 21a.

During the period between defendant Goodwin's false testimony on July 13, 1972, and Mr. Poe's surfacing as a government informer on the witness stand in the trial of United States v. Briggs, supra, on August 17, 1973, Mr. Poe testified he reported to petitioner Meadow after each occasion that he saw or spoke with respondent Camil, including every day respondents were before the grand jury.[3/] Thus, as a direct result of defendant Goodwin's perjury, the defense camp in United States v. Briggs, supra, was invaded by at least one paid FBI informer in violation of respondent's rights

3/ Petitioner Meadow was in charge of the FBI investigation on the case and worked with defendant Goodwin and petitioners Stafford and Carrouth before, during and after the grand jury period and throughout the trial.

under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments.

Defendant Goodwin, whose official residence is in Washington, D.C., was personally served with the summons and complaint. The petitioners (Stafford, Carrouth and Meadow) were all federal employees with offices in Florida when this action was commenced and when they were served by certified mail in accordance with 28 U.S.C. §1391(e).

All of the defendants moved for a transfer or change of venue to the United States District Court for the Northern District of Florida, or, in the alternative, for a dismissal as to petitioners Stafford, Carrouth and Meadow for a lack of jurisdiction over their persons, improper venue, and insufficiency of process.

On November 20, 1974 the District Court denied the motion to transfer venue

(Petition for Certiorari Appendix 20a-24a) (hereinafter Pet. App.) but on March 4, 1975, dismissed the action against the petitioners Stafford, Carrouth and Meadow ruling that despite 28 U.S.C. §1391(e), the District Court lacked venue and in personam jurisdiction with respect to them (Pet. App. 25a-26a). A final judgment of dismissal was entered as to petitioners Stafford, Carrouth and Meadow (Pet. App. 27a).[4/]

On appeal, the Court of Appeals for the District of Columbia Circuit reversed the dismissal, holding that the plain language of 28 U.S.C. §1391(e) provided jurisdiction and venue in this case. The court

4/ Defendant Goodwin's motion to dismiss on the grounds of prosecutorial immunity was denied by the District Court (Pet. App. 20a-24a). The Court of Appeals having accepted certification affirmed (No. 77-1401, App. 1a-38a). On June 19, 1978, this Court denied defendant Goodwin's Petition for Certiorari in Goodwin v. Briggs, supra.

rejected the claim that as applied the statute violated the defendant's constitutional rights. (Pet. App. 1a-19a). The Circuit denied a petition for rehearing (Pet. App. 29a) and en banc denied the suggestion for rehearing en banc (Pet. App. 30a), but allowed petitioners to lodge documents with the court (Pet. App. 29a).

REASONS FOR DENYING THE WRIT

I. THE PETITIONERS ARE SEEKING A JUDICIAL AMENDMENT OF CLEAR AND UNAMBIGUOUS STATUTORY LANGUAGE.

The decision of the court below is a straightforward and obvious application of the plain language of the statute. Petitioner's objections to the statute relate to legislative determinations clearly within the power of Congress. Such objections were made when the statute was being considered and were rejected.

The petitioners do not contend that

statute is ambiguous or imprecise. In fact, the statute, with absolute clarity, applies to the instant case.

Rather, petitioners argue that Congress did not realize when it enacted the statute that there would be an increase in suits against federal officials as a result of this Court's subsequent decision in Bivens v. Six Unknown Agents, 403 U.S. 388 (1971) and the erosion of the absolute immunity doctrine as concerns federal officials. Accordingly, petitioners urge that since the venue provisions of the statute are more burdensome upon federal employees than the Congress might have anticipated, it should be amended by this Court so as to eliminate, in damage actions, personal jurisdiction acquired by the service of process as specified in §1391(e). This argument by its very nature should be addressed to the Congress not to the court, for in

the absence of ambiguity the plain language of the statute must govern. See Banks v. Chicago Grain Trimmers Association, Inc., 390 U.S. 459, 465 (1968); Lewis v. United States, 92 U.S. 618, 621 (1875).

Beyond that however, a study of the legislative history shows that the argument being made by petitioners to this Court was clearly presented to the Congress - and just as clearly rejected. It appears that as the bill was going through the Congress, the Department of Justice sought to eliminate the inclusion therein of actions against officials for money damages. But the Congress specifically rejected that proposed limitation. The discussion of the legislative history in the opinion of the Court of Appeals (Pet. App. 6a-9a) sets this forth clearly.

Litigation against federal officials may very well have increased since 1962.

But both the Department of Justice at the time and the Congress were fully aware of the concern about the extension of the venue provisions in respect to damage actions. As the Court of Appeals pointed out, a letter on this point was written by Assistant Attorney General (now Justice) Byron White seeking clarification of the bill to eliminate damage actions from its scope. (Pet. App. 8a); that proposal was rejected.[5/] Indeed, the Senate Committee

5/ In a very recent decision of the Court of Appeals for the First Circuit, Driver v. Helms, (No. 77-1482, May 25, 1978) (Opposition to Petition for Certiorari, Appendix A, 1a-20a), (hereinafter Opp. App.) which deals with the very same issues here involved, the First Circuit, in agreeing with the Court of Appeals' decision in the instant case referred to this letter and said:

> At minimum this letter demonstrates that Congress was on notice that personal damage actions against government officials were possible, contrary to appellants' argument that due to broad immunity under the doctrine of Barr v. Mateo, 360 U.S. 561 (1959), and because Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), was not yet decided, Congress would not have been thinking of such actions, Id., Opp. App. 12a, fn. 19.

report was very clear as to what the Congress sought to achieve:

> The venue problem also arises in an action against a government official seeking damages from him for actions which are claimed to be without legal authority, but which were taken by the official, in the course of performing his duty. S. Rep. No. 1992, 87th Cong. 1st Sess. (1962) U.S. Code Cong. and Admin. News, p. 2786.

Immediately after the statute was enacted (long before Bivens and the asserted erosion of immunity holdings) the Department of Justice made clear that it understood that the new statute applied to damage actions, i.e., that the Department had not prevailed before the Congress. In a "Memorandum for all United States Attorneys" dated January 18, 1963, the Department said:

> "The venue provision is applicable against government officials and agencies for injunctions and damages as well as suits for mandatory relief. By including in the

> venue provision the phrase 'or under color of legal authority' the statute makes the expanded venue applicable not merely to actions for mandatory relief but also to actions in which the defendant government official is alleged to have taken or is threatening to take action beyond the scope of his legal authority although purporting to act in his official capacity."6/ (underlining supplied by Department of Justice)

Thus, the Department of Justice tried and failed to persuade Congress not to pass §1391(e) as enacted. Shortly after the law was passed, it acknowledged that fact. Now petitioners turn to the Court and, though recognizing the absolute clarity of the language, seek a legislative revision by the Court. But Article III of the Constitution clearly relegates to Congress the task of defining the scope of

6/ The document referred to was submitted by the petitioners to the Court of Appeals in this case with a "Motion to Lodge Documents" filed with a Petition for Rehearing.

the jurisdiction of the federal courts.7/

Only recently the Court after observing that "Congress has spoken in the plainest of words," Tennessee Valley Authority v. Hill, ____U.S.____, 46 L.W. 4673, 4684 (June 15, 1978) emphasized that: "once the meaning of the enactment is discerned and its constitutionality determined, the judicial process comes to an end", Ibid.

That perception of the roles of the courts as part of a tri-partite system of government is applicable to this case.

In addition to their argument that §1391(e) did not extend to damage actions,

7/ Alterations of the jurisdiction of federal courts are constantly the subject of Congressional consideration. Thus, at this very time Congress has before it bills to eliminate diversity of citizenship as a basis for federal jurisdiction (S. 2389, H.R. 9622, 95th Congress). Furthermore, the statute here at issue, 18 U.S.C. §1391(e), was amended by Congress as recently as October 21, 1976, P.L. No. 94-57432, 90 Stat. 2721-2722. The amendment does not bear on the questions here presented and did not add language excluding damage actions from its application.

petitioners contend that the statute is limited to suits which, prior to its enactment, could have been brought only in the District of Columbia (Petition for Certiorari, p. 11). Nothing in the statute so limits its impact as to damage actions. It is true that as to mandamus actions, ¶(a) of the 1962 act (now 28 U.S.C. §1361) extended jurisdiction to all federal courts to deal with such actions, instead of such proceedings being limited as theretofore to the District of Columbia. It may well be that Congress, while expanding the number of courts in which mandamus actions could be brought, had no intention of changing the limited nature of the mandamus remedy and expanding either the ministerial-discretionary rule or the clear-duty-to-act rule. But there is absolutely nothing in the language of the statute or its history from which one can conclude

that insofar as the statute affected damage actions (by its provisions in respect to venue and personal service) it would be limited to such damage cases as could previously have been brought in the District of Columbia. So to argue would mean that the statute's obvious intention to permit damage actions at the greater convenience of citizen plaintiffs would be frustrated by an interpretation wholly inconsistent with the statute's objectives.

II. THERE IS NO CONFLICT AMONG THE COURTS OF APPEALS WITH RESPECT TO THE ISSUES IN THIS CASE.

There are two circuits which have dealt squarely with the issues in this case, i.e., the Court of Appeals for the District of Columbia Circuit in the instant case (Pet. App. 1a-19a), and the First Circuit in Driver v. Helms, (Opp. App. 1a-20a).

Insofar as concerns the issues in this case, both Circuits are wholly in accord. Additionally, the Fifth Circuit in Ellinburg v. Connett, 457 F.2d 240 (1972), made a decision which, though not so fully spelled out, seems to be in accord with that of the First Circuit and the District of Columbia Circuit and in conflict with Sigler v. Levan, No. 77-CA-35 (W.D. Tex. 3/22/78) (Pet. App. I, pp. 37a-49a) relied on by petitioners.[8/] (Pet. for Cert., p. 11).

Petitioners contend that there are conflicting decisions of the Second and Ninth Circuits. That is simply not so.

8/ The District Court in Sigler v. Levan, supra, does not follow Ellingburg v. Connett, supra. Furthermore, the court was unaware of the ruling in the District of Columbia Circuit in the case at bar, although it had come down six months before the Sigler opinion was handed down. The Fifth Circuit will not have an opportunity to consider Sigler in the light of Ellinburg as Sigler was not appealed and has been transferred, upon the consent of all parties, to the District of Maryland.

Thus, Rudick v. Laird, 412 F.2d 16 (2nd Cir., 1969), was a habeas corpus case where jurisdiction is necessarily based on the location of the res - the body of the persons involved; Marsh v. Kitchen, 480 F.2d 1270 (2nd Cir., 1973), did not involve §1391(e) in any way, it dealt exclusively with the New York long arm statute; Smith v. Campbell, 450 F.2d 829 (9th Cir., 1971), like Rudick, involved a habeas corpus proceeding; National Resources Defense Council v. TVA, 459 F.2d 255 (2nd Cir., 1972), involved suits against the TVA and its officers which are governed by a separate statute (§8a of the TVA Act); and Liberation News Service v. Eastland, 426 F.2d 1379 (2nd Cir., 1970), merely held that §1391(e) did not apply to legislative employees.

Furthermore, the Second Circuit in Liberation News Service v. Eastland, supra,

426 F.2d at 1382, said by way of dictum that if §1391(e) were applicable, it would supply both venue and personal jurisdiction.

Since petitioners claim that the Second Circuit is in conflict with the First and District of Columbia Circuits, attention should be called to Kletschka v. Driver, 411 F.2d 436 (2nd Cir., 1969), which in a damage action against state and federal employees seems to be a holding en passant in accord with the position of the court below.

Powers v. Mitchell, 463 F.2d 212 (9th Cir., 1972), which like most of the cases cited by petitioner does not involve the question of a suit for damages says only that §1391(e) does not apply to a local federal agency such as a selective service board. 9/

9/ It should be noted that the other cases relied upon by petitioners are District Court rulings
(Fn. continued next page)

(Footnote continued from preceding page)

which were not appealed. E.g., Bertoli v. The Securities and Exchange Commission, 77 Civ. 1450 (S.D.N.Y. 1/4/77) (where plaintiff was pro se), Kipperman v. McCone, 422 F. Supp. 860 (N.D. Cal., 1976), and Rimar v. McCowan, 374 F.Supp. 1179 (E.D. Mich. 1974). Other courts are in agreement with the court below that §1391(e) is "a statute of the United States" which generally authorizes extra-territorial service of process within the meaning of Rule 4(f), and thus supplies personal jurisdiction over non-resident defendants. Ashe v. McNamara, 355 F.2d 277, 279 (1st Cir. 1965); Lowenstein v. Rooney, 401 F. Supp. 952, 961-62 (E.D. N.Y. 1975); United States v. MacAnich, 435 F. Supp. 240 (E.D.N.Y. 1977); Crowley v. United States, 388 F. Supp. 981, 987 (E.D. Wisc. 1975); Environmental Defense Fund, Inc. v. Froehlke, 348 F. Supp. 338, 364 (W.D. Mo. 1972), aff'd. on other grounds, 477 F. 2d 1033 (8th Cir., 1973); English v. Town of Huntington, 335 F. Supp. 1369, 1373 (E.D.N.Y. 1970); Maceas v. Finch, 324 F. Supp. 1252, 1254-55(N.D. Cal. 1970); Brotherhood of Locomotive Engineers v. Denver and R.G.W.R. Co., 290 F. Supp. 612, 615-16 (D. Col. 1968), aff'd. 411 F. 2d 1115 (10th Cir. 1969) and Powelton Civic Home Owners Ass'n. v. Department of Housing and Urban Renewal, 284 F. Supp. 809, 834 (E.D. Pa. 1968).

III. THERE IS NO CONSTITUTIONAL ISSUE OF SUBSTANCE IN THIS CASE.

Petitioners contend that the doctrine of International Shoe Co. v. Washington, 326 U.S. 310 (1945), imposing Due Process limitations upon the exercise of personal jurisdiction by the state courts should be applied to federal courts. So applied, the petitioners contend that the decision below represents a violation of "traditional notions of fair play and substantial justice." Petition for Certiorari, p. 13.

At the outset it seems extremely doubtful that the power of Congress to establish the territorial limits of the inferior federal courts is limited by the Constitution. The Court of Appeals in this case (Pet. App. 12a) emphasized that Congress clearly had the power to establish a single nationwide District, and is certainly not limited by state or any other boundaries

in defining the jurisdiction of inferior federal courts. See also Driver v. Helms, Opp. App. 18a.

Moreover, if "traditional notions of fair play and substantial justice" would limit the jurisdiction of inferior federal courts, the petitioners can hardly show a denial of Due Process in this case for the following separate and distinct reasons:

A. The petitioners are not ordinary litigants. They employed the powers of their office to subpoena respondents from a variety of states to appear before a grand jury in Tallahassee, Florida, in many cases far from the respondents' homes and with only two to three days notice. Petitioners used the "color of legal authority" to harm respondents in the manner complained of. Congress was concerned in passing §1391(e) with giving citizens injured by such misused power a meaningful remedy.

As the First Circuit said in Driver v. Helms, Opp. App. 19a:

> We note that officers of the federal government are different from private defendants because they can anticipate that their official acts may affect people in every part of the United States.

B. This suit against federal officials is being brought in the seat of government and within the District where one of the defendants has his office and where petitioners' department headquarters are located. This is hardly a case where respondents arbitrarily chose a far-away District which had no real meaning in terms of the case itself.

C. The actual burden upon the petitioners in this case is quite ephemeral. Whatever may be the situation in other cases, here the government has furnished or paid for petitioners' counsel, who function out of either Washington, D.C. or New York.

There is in fact no burden or inconvenience to petitioners in litigating this matter in the District of Columbia.[10/]

10/ Petitioners' contention that some federal employee may not be defended by the Department of Justice is too hypothetical to require the attention of this Court. Even though the Solicitor General determined not to file a petition for a writ of certiorari in this case, the government undertook to pay for private counsel to enable the petitioners to ask this Court to review the decision below. Moreover, the position of the Department of Justice was clearly stated in the government's amicus curiae brief in the First Circuit in Driver v. Helms, supra (Gov't First Circuit Brief, p. 2-3). The government said:

> The interest of the United States in this matter is readily apparent. The Department of Justice regularly provides legal representation by private counsel for federal officials, past and present, who are personally sued for damages based on actions taken by those officials in the performance of their official duties. The United States is thus vitally concerned with any and all questions which have a significant impact on the conduct of such litigation.

D. Petitioners, who express much concern about fairness to themselves, seem to have little concern about fairness to the respondents. What petitioners are really asserting for is that, if respondents want one suit, respondents must sue a former United States Attorney (now a judge) and other government officials in the very jurisdiction where such officials have most impact upon jurors and judges. Alternatively, they might allow that respondents could have two separate suits -- one in Florida against petitioners and one in the District of Columbia against defendant Goodwin -- even though the defendants are charged with acting in concert. These are rather perverted notions of "fairness." The Congress' main concern when it enacted this legislation was to consciously ease the litigation burden upon plaintiffs suing federal officials. By their arguments,

petitioners have sought to turn the matter around so that the citizen may have to run all over the country -- bear the expense of a far way forum or unnecessarily multiple lawsuits -- and be relegated to an unfavorable forum -- to serve the convenience of federal officials.

E. Finally, as pointed out by the First Circuit in Driver v. Helms, Opp. App. 19a:

> We acknowledge that these appellants may have to answer complaints in a broader range of judicial districts than would non-governmental defendants. But they are not without protection. A district court has broad discretionary power" [f]or the convenience of parties and witnesses, in the interest of justice, [to] . . . transfer any civil action to any other district . . . where it might have been brought." 28 U.S.C.§1404(a). We would expect courts to be sympathetic to motions for change of venue when defendants would otherwise be substantially prejudiced and when there is an alternative venue that would protect the parties' rights.

Thus, the power of the district court to effect a change of venue in an appropriate case is the obvious safety valve to complaints of unfairness.[11/]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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11/ A change of venue motion was denied in this case by the district court. (Pet. App. 20a-24a)

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Dated: New York, New York
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*/ Counsel wish to express their appreciation to Donna Demac, a law student at Boston College Law School, for her invaluable assistant in the preparation of this brief.

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 77-1482

RODNEY D. DRIVER, et al.,
APPELLEES,
v.
RICHARD HELMS, et al.,
APPELLANTS.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
[HON. RAYMOND J. PETTINE, *U.S. District Judge*]

Before COFFIN, *Chief Judge*
CAMPBELL AND BOWNES, *Circuit Judges.*

Walter H. Fleischer, Donald J. Cohn and *Jacquelin A. Swords,* with whom *Earl Nemser, Cadwalader, Wickersham & Taft, George M. Vetter, Jr., Hinckley, Allen, Salisbury & Parson, Seymour Glanzer, Kenneth Adams, Joel Kleinman, Dickstein, Shapiro & Morin, James V. Kearney, Nancy E. Friedman, Webster & Sheffield, Alan T. Dworkin, Aisenberg & Dworkin, Joseph V. Cavanagh, Higgins, Cavanagh & Cooney, Charles R. Donnenfeld, Cameron M. Blake, Rodney F. Page, Arent, Fox, Kintener, Plotkin & Kahn, Guy J. Wells, Gunning, LaFazia & Gnys, Inc., Alfred F. Belcuore, Cole and Groner, P.C., Harry W. Asquith, Edward W. Moses, Swan, Kenney, Jenckes & Asquith, Wallace L. Duncan, Duncan, Brown, Weinberg & Palmer, Joseph Dailey* and *Breed, Abbott & Morgan* were on briefs, for appellants.

Melvin L. Wulf, with whom *Clark, Wulf & Levine, Burt Neuborne, Richard W. Zacks, Winograd, Shine & Zacks,* and *Joel M. Gora* were on brief, for appellees.

Barbara Allen Babcock, Assistant Attorney General, *Lincoln C. Almond,* United States Attorney, *Robert E. Kopp* and *Paul Blankenstein,* Attorneys, Appellate Section, Civil Division, Department of Justice, on brief for United States, amicus curiae.

APPENDIX A

May 25, 1978

COFFIN, *Chief Judge.* Plaintiffs-appellees brought this action in 1975 in the federal district court for the district of Rhode Island on behalf of themselves and others similarly situated. Their complaint alleges that the defendants-appellants[1] illegally interfered with their mail, thereby violating appellees' rights under the First, Fourth, Fifth, and Ninth Amendments. The suit seeks damages and declaratory and injunctive relief. Subject matter jurisdiction was invoked under 28 U.S.C. §§ 1331 a), 1339, 1343, 1361, and 5 U.S.C. § 702.

Appellants are 25 present or former United States government officials, each sued in his individual and in his official or former official capacity. One of the named plaintiffs, Driver, lives in Rhode Island,[2] but none of the appellants reside in or have substantial contacts with Rhode Island, and the complaint does not allege that any illegal activity occurred in Rhode Island.[3] Therefore, venue is not proper under 28 U.S.C. § 1391(b), and, since none of the appellants were served within Rhode Island,[4] service of process was inappropriate under F. R. Civ. P. 4(f).

Appellees invoke 28 U.S.C. § 1391(e) to support venue and service of process:[5]

> "A civil action in which each defendant is an officer or employee of the United States or any agency

[1] Other defendants in the case below are not parties to this appeal.

[2] The other named plaintiffs are residents of New York, Minnesota, Connecticut, and California.

[3] The illegal interference with appellees' first-class mail is alleged to have occurred in New York City.

[4] The appellants each were served by certified mail outside Rhode Island.

[5] Appellees also suggested that Rhode Island's long arm statute supplied jurisdiction. R.I. Gen. Laws § 9-5-33 (1956). *See Driver* v. *Helms,* 74 F.R.D. 382, 400 n. 23 (D. R.I. 1977). This issue is not presented by this appeal.

> thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.
>
> "The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought."[6]

Appellants filed motions to dismiss under Federal Rules of Civil Procedure 12(b)(2) (lack of jurisdiction over the person), 12(b)(3) (improper venue), and 12(b)(4) (insufficiency of process). The district court denied these motions, but certified that the questions involved controlling issues of law as to which there is substantial ground for difference of opinion and that an immediate appeal could materially advance the litigation. *Driver* v. *Helms,* 74 F.R.D. 382, 401-02 (D. R.I. 1977). We thus have appellate jurisdiction under 28 U.S.C. § 1292(b).

Appellants argue that 28 U.S.C. § 1391(e), contrary to the holding of the district court, does not give venue to the district court in Rhode Island, does not give the court

[6] 28 U.S.C. § 1391(e) was amended in 1976. The word "each" was changed to "a" in the first sentence, and the following sentence was added to the end of the first paragraph:

> "Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party."

P.L. 94-574, § 3, 90 Stat. 2721 (Oct. 21, 1976).

jurisdiction over the persons of the appellants, and does not authorize the service of process on these appellants. They argue that reliance on § 1391(e) is misplaced because that section does not apply to former officials, does not apply to suits against officials for damages in their individual capacities, and does not independently supply in personam jurisdiction.

THE FORMER OFFICIALS

Ordinarily the plain meaning of the language of a statute is controlling. *See Massachusetts Financial Services, Inc.* v. *Securities Protector Investor Corp.*, 545 F.2d 754, 756 (1st Cir. 1976). Section 1391(e) applies, by its terms, when a "defendant *is* an officer or employee of the United States . . . *acting* in his official capacity or under color of legal authority . . . ." (emphasis added) Because the operative language is in the present tense, we read the section to exclude a defendant who *was* an officer or employee.

"Of course, deference to the plain meaning rule should not be unthinking or blind. We would go beyond the plain meaning of statutory language when adherence to it would produce an absurd result or 'an unreasonable one "plainly at variance with the policy of the legislation as a whole."' " *Massachusetts Financial Services, supra,* 545 F.2d at 756, *quoting United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543 (1940), *quoting Ozawa* v. *United States*, 260 U.S. 178, 194 (1922); *cf. Natural Resources Defense Counsel* v. *TVA*, 459 F.2d 255, 257 (2d Cir. 1972) (eschewing the "tyranny of literalness").[7] We do not, however, find any indication in the statute itself or in the legislative

[7] "[W]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *United States* v. *Culbert*, 46 U.S.L.W. 4259, 4260 n. 4 (U.S. March 28, 1978), *quoting United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543-44 (1940).

history that former officials were meant to be included. We are not alone in this conclusion. *See Kipperman* v. *McCone*, 422 F. Supp. 860, 876 (N.D. Cal. 1976); *Wu* v. *Keeney*, 384 F. Supp. 1161, 1168 (D. D.C. 1974).

The cases that have reached a contrary result have decided that excluding former officials would undercut the policies of § 1391(e). *See Driver* v. *Helms, supra,* 74 F.R.D. at 398-400; *United States* v. *McAninch*, 435 F. Supp. 240, 245 (E.D. N.Y. 1977); *Lowenstein* v. *Rooney*, 401 F. Supp. 952, 962 (E.D. N.Y. 1975). We do not think it absurd or plainly at variance with the policies of § 1391(e) to limit it to those who are government officials at the time the action is brought.[8] We are unimpressed by the specter of government officials resigning their positions simply because they fear an action might be brought against them. As the court below noted, resignation would not terminate their liability. *See Driver* v. *Helms, supra,* 74 F.R.D. at 399-400. The most an official could gain would be to avoid venue in the district where a plainitiff lives. A career in government service is, one would think, a disproportionate sacrifice to make for so small a gain. Moreover, we are not persuaded that Congress' desire "to provide readily available, inexpensive judicial remedies for the citizen who is aggrieved by the workings of Government", H. Rep. No. 536, 87th Cong., 1st Sess. 3 (1961) [hereinafter referred to as House Report], indicates that Congress meant § 1391(e) to provide a net that could draw everyone connected with a governmental action into litigation in a particular district. For instance, those who were never government officials but are defendants in a law suit clearly cannot be

[8] We do not focus on a later time, such as the time when a hearing is held or a decision issued, because the statute speaks to the ability to bring an action. Moreover, if a court were not able to determine venue at the time an action is brought, judicial processes could be thrown into chaos by mobile litigants.

reached by § 1391(e).[9] In fact there is a clear indication in the legislative history that Congress did not mean to reach at least those former officials who have moved away from Washington.[10] Therefore, we reverse the district court as to this point and hold that § 1391(e) does not apply to those defendants who, at the time this action was brought, were not serving the government in the capacity in which they performed the acts on which their alleged liability is based.[11]

Personal Damage Actions

The next issue we must face is whether § 1391(e) applies to actions for damages against officials in their individual capacities. Section 1391(e) was passed, together with 28 U.S.C. § 1361, as the Mandamus and Venue Act of 1962. Before 1962 most actions against federal officials could not be brought outside the District of Columbia. Higher officials residing in Washington were usually indispensable parties against whom venue could not be secured except in Washington. Furthermore, such actions

[9] That such defendants may exist is indicated by the 1976 amendment. *See* note 6, *supra*.

[10] "This bill is not intended to give access to the Federal courts to an action which cannot now be brought against a Federal official in the U.S. District Court for the District of Columbia." H. Rep. No. 536, 87th Cong., 1st Sess. 2 (1961). Prior to 1962 (when the bill was passed) former officials who had moved away from Washington would not have been subject to suit in Washington.

[11] The act is directed at officials "*acting* . . . under color of legal authority". Since official acts expose the officer to expanded venue, and since we have concluded that this exposure terminates when the official leaves office, it would be anomalous to hold that one of the appellants serving the government in a different capacity is nonetheless still exposed to national venue and service of process. As to the act or omission that exposed him to liability, it is only fortuitous that he is still in government. We need not now decide whether someone who has been promoted in the same department is likewise exempted from the operation of § 1391(e).

were often in the nature of mandamus, and federal district courts outside the District of Columbia lacked subject matter jurisdiction over mandamus actions. The crux of appellants' argument is that § 1391(e) should be narrowly construed as a companion to § 1361, designed to combat the specific, relatively narrow problem that spurred Congress to act. That is, they would have us read § 1391(e) to do no more than supply venue in those suits made possible by § 1361, "suits in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The Second Circuit has twice followed similar reasoning, but in cases distinguishable from ours. In *Liberation News Service* v. *Eastland*, 426 F.2d 1379 (2d Cir. 1970), the court said that § 1391(e) was aimed at the mischief posed by the inability to review government action outside Washington and that § 1391(e) reached only those who might be subject to compulsion under § 1361. The holding of the case, however, was that the section did not apply to legislators.[12] The court did not have occasion to decide the kinds of civil actions that could be brought against someone to whom § 1391(e) did apply. In *Natural Resources Defense Council* v. *TVA*, *supra*, 459 F.2d at 255, the court said that §§ 1391(e) and 1361 must be read together, *id.* at 258, and that the literal meaning should not necessarily control, *id.* at 257; but the holding was that § 1391(e)'s venue provisions did not apply to the TVA because another statute controlled venue for actions against the TVA. *Id.* at 259. Section 1391(e) states that it applies "except as otherwise provided by law." The court went on to point out that a suit against the TVA could not have been brought in Washington before 1962. *See* House Report, *supra*, at

[12] We do not indicate our views on this holding. *See* note 17, *infra*.

2.[13] In this case the action, at least as against current officials, could have been brought in Washington.

The weakness of the argument, even apart from the fact that it reflects no clear signal from the legislative history discussed below, is that we must interpret the United States Code as it is written. Congress did not limit the application of § 1391(e) to "actions in the nature of mandamus". Rather Congress used the words "[a] civil action in which each defendant is an officer or employee of the United States . . . acting . . . under color of legal authority." The statute does not, by its terms, limit the kind of civil action to which it applies. The case at bar is a civil action. The complaint alleges that the defendant officers of the United States were acting "under color of legal authority". All elements fit — and we deal with a statute speaking in a highly technical field, venue and jurisdiction, where, if anywhere, precision is required.

The plain language of § 1391(e) covers this case, but again we would go beyond the plain language if the result were absurd or plainly at variance with congressional policies. We conclude, after considering such questions, as have many other courts, that § 1391(e) should cover damage actions against officers in their individual capacities.[14] *See Briggs* v. *Goodwin*, 569 F.2d 1 (D.C. Cir. 1977); *Ellingburg* v. *Connett*, 457 F.2d 240, 241 (5th Cir. 1972);

[13] *See* note 10, *supra*.

[14] The Supreme Court has said that § 1391(e) does not apply to habeas corpus actions, *Schlanger* v. *Seamans*, 401 U.S. 487, 490 n. 4 (1971), but that decision turned on the special nature of habeas corpus actions which though "technically 'civil,' . . . [are] not automatically subject to all the rules governing ordinary civil actions." *See also* the cases cited by the court below. 74 F.R.D. at 391-92.

We might have viewed *Relf* v. *Gasch*, 511 F.2d 804 (D.C. Cir. 1975), as contrary authority, but in *Briggs* v. *Goodwin*, *supra*, 569 F.2d at 6-7, the same circuit confined *Relf's* holding to situations where the alleged wrong was not connected with the defendant's government service.

Driver v. *Helms*, *supra*; *United States* v. *McAninch*, *supra*; *Lowenstein* v. *Rooney*, *supra*; *Patmore* v. *Carlson*, 392 F. Supp. 737, 738 (E.D. Ill. 1975); *Wu* v. *Keeney*, 384 F. Supp. 1161 (D. D.C. 1974); *Green* v. *Laird*, 357 F. Supp. 227 (N.D. Ill. 1973); Hart & Wechsler, The Federal Courts and the Federal System 1388 (1973); 2 Moore, Federal Practice ¶ 4.29, 1210 (1977). *Cf. Kletschka* v. *Driver*, 411 F.2d 436, 442 (2d Cir. 1969) (basing venue on § 1391(b) but adding that § 1391(e) "seems" to apply as well). *But see Kenyatta* v. *Kelly*, 430 F. Supp. 1328, 1330 (E.D. Pa. 1977); *Davis* v. *F.D.I.C.*, 369 F. Supp. 277 (D. Colo. 1974); *Paley* v. *Wolk*, 262 F. Supp. 640 (N.D. Ill. 1965).

The legislative history of § 1391(e) is at best ambiguous, but there are indications that the drafters of the legislation understood that the act might apply to actions such as this one and were not sufficiently bothered by that possibility to prevent it. This act originated as H.R. 10089, 86th Cong., 2d Sess. (1960).[15] That bill was limited to officers acting in their official capacity, and its author, Representative Budge, explained that it was intended to meet the narrow problem described above. Hearing Before the Committee on the Judiciary (Subcommittee No. 4), 86th Cong., 2d Sess. 2-4 (May 26 and June 2, 1960) [hereinafter cited as Hearings].[16] The hearings on the bill before a subcommittee of the Committee on the Judiciary demonstrate that at least some members of that subcommittee did not want the bill limited to a narrow purpose. For instance, at one point Mr. Drabkin, the subcommittee's counsel, stated, "I think what

[15] H.R. 10089 read, in pertinent part:

> "A civil action in which each defendant is an officer of the United States in his official capacity, a person acting under him, or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides."

[16] The unpublished transcripts of these hearings were submitted to us by appellants, and appellees have not disputed their authenticity. We have verified the authenticity, accuracy, and availability of these transcripts through the office of the General Counsel to the House of Representatives' Committee on the Judiciary.

this bill is concerned with doing is dealing with mandamus and also dealing with petitions for review which may not properly be brought now because of some venue defect." Congressman Dowdy responded, however, "I asked to be sure it was not limited to that." *Id.* at 32.

Later in the same hearing Mr. MacGuineas, a representative from the Department of Justice, said he did not understand what the bill was trying to do. "In order to understand that we would have to know how this bill is intended to affect each particular type of suit that a citizen may want to bring against a Government official, and there are many different types." Congressman Dowdy responded, "Maybe we want it to apply to all suits. There is not any particular one. We want it to apply to any one." Congressman Whitener followed that up by saying, "I did not understand there was any doubt." *Id.* at 53-54. One type of suit hypothesized by Mr. MacGuineas was a slander suit against a congressman.[17] Congressman Whitener indicated that he felt the bill should cover such a situation, Hearings, *supra* at 55, and he compared it to a postal worker slapping a housewife as he delivered mail. *Id.* at 58.

The desire to reach a variety of causes of action prompted the first mention of the "under color of legal authority" phrase. After a discussion whether certain kinds of acts would constitute official action or not, Mr. Drabkin proposed, "Suppose in order to take care of a body of law which seems to say that when a government official does something wrong he is acting in his individual capacity, we added the following language—'acting in his official

[17] The Second Circuit has held that § 1391(e) does not apply to legislators, but the holding was based in part on not finding any "word in the five year gestation period of § 1391(e) to suggest that Congress thought it was changing the law not merely with respect to the executive branch but also concerning itself, its officers and its employees." *Liberation News Service* v. *Eastland*, 426 F.2d 1379, 1384 (2d Cir. 1970). This issue is not presented to us, and we do not decide it.

capacity or under color of legal authority.' That would not bring in the type of situation in which a postman, after he had gone home for the night, proceeded to run over somebody's child." *Id.* at 61-62. This is the first appearance of the "under color" language, and its context suggests that it was understood to exclude only those personal damage actions arising from purely private wrongs.

The Department of Justice expressed reservations about the utility of H.R. 10089 because it was limited to "official actions", and did not expand subject matter jurisdiction. Most actions against government officials, such as those seeking personal damages for acts in excess of official authority, would not be covered by a bill limited to "official capacity". Actions that would be "official", would be equivalent to mandamus actions, and so would still be confined to the District of Columbia for lack of subject matter jurisdiction elsewhere. *See Briggs* v. *Goodwin, supra,* 569 F.2d at 4. The new bill, H.R. 12622, 86th Cong., 2d Sess. (1960), met these objections. Section 1 of the bill added a new section, now codified as 28 U.S.C. § 1361, extending mandamus jurisdiction to all district courts.[18] In section 2 of the bill, § 1391(e), Congress included, inter alia, the phrase "under color of legal authority". *See Briggs* v. *Goodwin, supra,* 569 F.2d at 4-5.

This bill was reintroduced in the next Congress as H.R. 1960, 87th Cong., 1st Sess. (1961). The Department of Justice, in a letter from then Assistant Attorney General Byron White suggested more changes. The letter recognized that section 2 of the bill, the new § 1391(e) "covers an entirely different subject" than section 1, the new 28 U.S.C. § 1361, and that unless clarified § 1391(e) might

[18] 28 U.S.C. § 1361 reads:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

apply to "suits for money judgments against officers." S. Rep. No. 1992, 87th Cong., 2d Sess. (1962), 1962 U.S. Code Cong. & Adm. News 2784, 2789 [hereinafter cited as Senate Report].[19] Though acting on other suggestions from that letter,[20] Congress did nothing to eliminate personal damage actions. In fact, both the House and Senate reports state, "The venue problem also arises in an action against a Government official seeking damages *from him* for actions which are claimed to be without legal authority but which were taken by the official in the course of performing his duty." House Report, *supra,* at 3; Senate Report, *supra,* 1962 U.S. Cong. & Admin. News at 2786 (emphasis added).[21]

In the face of all of this, appellants argue that § 1391(e) was meant to do no more than provide venue in cases to which § 1361 applies, actions in the nature of mandamus brought outside the District of Columbia. In support of this argument they point to language in the legislative history that "[t]he purpose of this bill is to make it possible to bring actions against Government officials and agencies in U.S. district courts outside the District of Columbia, which, because of certain existing limitations on

[19] At minimum this letter demonstrates that Congress was on notice that personal damage actions against government officials were possible, contrary to appellants' argument that due to broad immunity under the doctrine of *Barr* v. *Mateo,* 360 U.S. 564 (1959), and because *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971), was not yet decided, Congress would not have been thinking of such actions.

[20] For example, the letter suggested that the mandamus jurisdiction section should be limited to actions to compel a duty "owed the plaintiff". The Senate, by amendment adopted this provision, and the House accepted the amendment. *See* note 17, *supra. See generally Briggs* v. *Goodwin,* 569 F.2d 1, 5 n. 39 (D.C. Cir. 1977).

[21] This passage undermines appellants' argument that the only damage actions Congress contemplated were actions in the nature of mandamus against an official to recover money allegedly owed to the plaintiff by the United States.

jurisdiction and venue, may now be brought only in the U.S. District Court for the District of Columbia." House Report, *supra,* at 1. Appellants also point to the following paragraph of the Report:

> "By including the officer or employee, both in his official capacity and acting under color of legal authority, the committee intends to make the proposed section 1391(e) applicable not only to those cases where an action may be brought against an officer or employee in his official capacity. It intends to include also those cases where the action is *nominally brought against the officer in his individual capacity even though he was acting within the apparent scope of his authority* and not as a private citizen. *Such actions are also in essence against the United States* but are brought against the officer or employee as individual only to circumvent what remains of the doctrine of sovereign immunity. The considerations of policy which demand that an action against an official may be brought locally rather than in the District of Columbia require similar venue provisions where the action is *based upon the fiction that the officer is acting as an individual.* There is no intention, however, to alter the venue requirements of Federal law insofar as suits resulting from the official's private actions are concerned." *Id.* at 3-4 (emphasis as supplied by appellants).

We do not think that these passages clearly exclude the result that we have reached. Even if we were to acknowledge that the primary purpose of § 1391(e) was to expand venue in mandamus cases, that would not preclude it from serving other purposes as well. That it does do so and was intended to do so is indicated by the legislative history described above.

Further, unless one were prepared to argue that the 1976 amendment was a mistake, we think it must be taken as a further indication that Congress, whatever its intent at the time it passed § 1391(e), now understands the section to reach personal damage actions. The amendment, note 6, *supra*, allows defendants who are not government officers to be joined in an action with officers when venue as to the officers is asserted under § 1391(e). It would make little sense to join someone who is not an officer if the suit were limited to an action in the nature of mandamus. Therefore, the suit Congress was contemplating must be aimed at acts that can give rise to liability for private remedies.

We affirm the district court's holding that § 1391(e) applies to personal damage actions.

PERSONAL JURISDICTION

Appellants' final argument is that § 1391(e)'s service of process provision facilitates the broadened venue provisions, but only if the district in which the suit is brought can establish personal jurisdiction by some other mechanism. In the alternative they argue that even if § 1391(e) broadens personal jurisdiction, it would be unconstitutional to apply it to individuals who lacked the minimum contacts with the state in which the court sits that are required by *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and its progeny.

Appellants state their argument as follows:

> "Nothing in Section 1391 speaks to personal jurisdiction. The statute is entitled 'venue generally' and sets forth in its various sections the rules of venue in civil actions. The statute specifically authorizes only a method of service of process, as distinct from a grant of *in personam* jurisdiction, for the federal officers or agencies within its purview. Indeed, the service of process provision in the statute emphasizes the focus

> of the statute on review of agency actions and present officials since service is to be made 'to the officer or agency.' The statute addresses only the mechanics of service of process and does not address the exercise of personal jurisdiction. Obviously, it is one thing for an individual to be served the process extraterritorily [*sic*], but quite another for that individual to be subject to the personal jurisdiction of a court in compliance with the Constitutional requirements of due process."[22]

It is true that jurisdiction over the person and service of process are distinguishable, but they are closely related.[23] "[S]ervice of process is the vehicle by which the court may obtain jurisdiction." *Aro Manufacturing Co.* v. *Automobile Body Research Corp.*, 352 F.2d 400, 402 (1st Cir. 1965). If Congress, by § 1391(e), authorized service of process beyond the geographical limits that F. R. Civ. P. 4(f) would otherwise impose, and if such service does not violate the Constitution, then service was properly made in this case, and the court properly acquired jurisdiction over the persons of the appellants.

Because appellants are being sued in their individual capacities, they must be served as required by F. R. Civ. P.

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[22] The facts that § 1391(e) was part of "The Mandamus and Venue Act" and that it is codified in a chapter labelled "District Courts; Venue" are factors to consider in determining whether the statute can be used as a basis of personal jurisdiction. They do not overcome, however, the plain language of the statute, which read in the light of the legislative history, *see United States* v. *Culbert*, *supra*, note 7, as set out in the text, indicates that the statute confers personal jurisdiction as well as venue. Moreover, there is not an obviously more appropriate chapter of the code. The chapter entitled "District Courts; Jurisdiction" deals exclusively with subject matter jurisdiction.

[23] The distinction is most important, as an issue of federal practice, in diversity cases. A state long arm statute might authorize extraterritorial service of process that would reach a defendant over whom the state could not constitutionally exercise personal jurisdiction.

4(d)(1), rather than 4(d)(4) or 4(d)(5). That is, a copy of the summons and complaint must be personally delivered. Rule 4(f), however, limits service of process to the territory of the state in which the court is sitting. But Rule 4(f) permits statutory exceptions, and Congress has, in some cases, authorized service of process beyond state boundaries. *See Robertson* v. *Railroad Labor Board,* 268 U.S. 619, 622 (1925); 4 Wright & Miller, Federal Practice and Procedure, § 1125 (1969); Hart & Wechsler, *supra,* at 1106-07. The first question is whether Congress did so in this case.

The second paragraph of § 1391(e) provides that "[t]he summons and complaint . . . shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought." Clearly this provision does more than describe the mechanics of service of process. It creates an exception to the general rule by allowing service of process anywhere in the United States by certified mail.

Not only does our reading of the statute command such an interpretation, but we are persuaded that this is precisely what Congress intended. Judge Maris, testifying before the subcommittee as a representative of the Judicial Conference, pointed out that the original bill, H.R. 10089, created a "problem about the acquisition of jurisdiction in personam by the Court in the venue" created by the bill. Hearings, *supra,* at 87. The bill relied on the Federal Rules of Civil Procedure to provide service of process, but Rule 4 would not permit service of process on the individual involved in the suit if that individual were outside the state in which the suit was brought. Judge Maris suggested that the statute provide for broader service:

> "There are statutes which do, like the Antitrust Laws, the Sherman Antitrust Act, under which you can bring a suit against defendants and serve them anywhere in the United States, and of course under the Bankruptcy Act you can serve persons anywhere in the United States.
>
> "Now what you would have to do here it seems to me would be to provide for the service that we discussed, namely, service upon the U.S. Attorney, service by mail upon the Attorney General, and also service by mail anywhere in the United States upon the officer or agent being sued.
>
> "That would take care of it because all that is necessary is for Congress to authorize service to be made outside of the District, and it is perfectly valid to do so." Hearings at 88-89.

Congress, following Judge Maris' suggestion, provided nationwide service of process by mail and expected that broadening service would correspondingly broaden personal jurisdiction. Congress recognized that it would serve no purpose to broaden venue without also broadening service of process. House Report, *supra,* at 4. *See Briggs* v. *Goodwin, supra,* 569 F.2d at 7-8. Thus, to the same extent that § 1391(e) supplies venue, it supplies the mechanism to secure personal jurisdiction.[24]

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[24] *See Briggs* v. *Goodwin, supra,* 569 F.2d at 8; *Liberation News Service* v. *Eastland,* 426 F.2d 1379, 1382 (2d Cir. 1970) (dictum); *United States* v. *McAninch,* 435 F. Supp. 240, 244 (E.D. N.Y. 1977); *Driver* v. *Helms,* 74 F.R.D. 382, 389 (D. R.I. 1977); *Lowenstein* v. *Rooney,* 401 F. Supp. 952 (E.D. N.Y. 1975); *Crowley* v. *United States,* 388 F. Supp. 981, 987 (E.D. Wis. 1975); *Environmental Defense Fund, Inc.* v. *Froehlke,* 348 F. Supp. 338, 364 (W.D. Mo. 1972), *aff'd,* 477 F.2d 1033 (8th Cir. 1973); *English* v. *Town of Huntington,* 335 F. Supp. 1369, 1373 (E.D. N.Y. 1970); *Macias* v. *Finch,* 324 F. Supp. 1252, 1255 (N.D. Cal. 1970); *Brotherhood of Locomotive Engineers* v. *Denver & Rio Grande Western R.R. Co.,* 290 F. Supp. 612 (D. Colo. 1968), *aff'd,* 411 F.2d 1115 (10th Cir. 1969). *Cf. Ashe* v. *McNamara,* 355 F.2d 277, 279 (1st Cir. 1965).

Having concluded that Congress did create nationwide service of process, we must next decide whether § 1391(e), so interpreted, is constitutional. Appellants argue, and we will assume, that they lack "minimum contacts" with the State of Rhode Island. The minimum contacts test was developed in cases testing the limits of a state's jurisdiction over those not found within its boundaries. The circumscription of state court jurisdiction is a product of boundaries to states' sovereignty.[26] The United States, however, whose court is here asserting jurisdiction, does not lose its sovereignty when a state's border is crossed. The Constitution does not require the federal districts to follow state boundaries. That decision was made by Congress, and Congress could change its mind. Whether or not Congress could go so far as to establish only one national district court, *see Briggs* v. *Goodwin, supra,* 569 F.2d at 9, it is clear that Congress could greatly reduce the number of federal districts and draw their boundaries without regard to state boundaries. *See id.*, at 8-10.

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[26] This remains true even after *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945), and *Shaffer* v. *Heitner,* 433 U.S. 186 (1977). A state boundary is still a significant jurisdictional demarcation because if a defendant is found and served within the state, minimum contacts need not be established, and jurisdiction may be asserted on the basis of the state's sovereignty. We see no reason why the United States does not have the same power over defendants found within its borders. Even if we were to say that minimum contacts had to be established, anyone found and served within the United States would have sufficient contacts with the United States. *See United States* v. *McAninch,* 435 F. Supp. 240, 244 (E.D. N.Y. 1977).

Appellants argue that the two Supreme Court cases cited above demonstrate that the Court has banished sovereignty as a factor in determining jurisdiction, substituting a test based on "[f]air play and substantial justice [which] are in the main functions of distance." We can think of no case that has made distance a factor in determining minimum contacts. The test to determine whether a defendant may be brought before a state's courts, say the courts of Rhode Island, is no different whether that defendant is found in Connecticut or in Hawaii.

Appellants next argue, with some force, that it would be very unfair and would violate due process to force them, as individuals, to answer suits in districts with which they have no connection and, further, that answering such suits places a burden upon them greater than that carried by a private litigant who would not have to travel to a far-away court—a court which might be far removed from the place where the cause of action arose, and which might have been chosen because the plaintiffs felt the judge would be friendly to their claims. We acknowledge that these appellants may have to answer complaints in a broader range of judicial districts than would non-governmental defendants. But they are not without protection. A district court has broad discretionary power "[f]or the convenience of parties and witnesses, in the interest of justice, [to] . . . transfer any civil action to any other district . . . where it might have been brought." 28 U.S.C. § 1404(a). We would expect courts to be sympathetic to motions for change of venue when defendants would otherwise be substantially prejudiced and when there is an alternative venue that would protect the parties' rights. Furthermore, we note that officers of the federal government are different from private defendants because they can anticipate that their official acts may affect people in every part of the United States.

Congress is, of course, limited in the actions it can take by the Due Process Clause of the Fifth Amendment, but application of the Clause is not related to state boundaries. Rather, the requirement is that the nationwide "service required by statute must be reasonably calculated to inform the defendant of the pendency of the proceedings in order that he may take advantage of the opportunity to be heard in his defense." *Mariash* v. *Morrill,* 496 F.2d 1138, 1143 (2d Cir. 1974). Certainly the certified mail requirement in § 1391(e) meets that standard. Such service is not extra-

territorial for a court of the United States; therefore, the minimum contacts analysis is not relevant. We conclude that national service of process as provided by § 1391(e) is constitutional.[26] *Briggs* v. *Goodwin, supra*, 569 F.2d at 8-10; *United States* v. *McAninch, supra*, 435 F. Supp. at 244; *Driver* v. *Helms, supra*, 74 F.R.D. at 391.

Affirmed in part, reversed in part, and remanded.

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[26] The Supreme Court has apparently not decided this precise issue since *International Shoe*. In one case the Court decided not to address the issue. *United States* v. *Scophony Corp.*, 333 U.S. 795, 840 n. 13 (1948).

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